PART IV

Section 1-C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN,
ASHOK ROAD
NEW DELHI-1.

NOTIFICATION

Dated 22 July, 1978

No. 82/KT-LC/1/74/—In pursuance of clause (b) of sub-section (2) of section 116(C) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the orders dated 28th July and 6th December, 1977 of the Supreme Court of India in Civil Appeals No. 1114(NCE) of 1977 against the Judgment dated 22nd September, 1976 of the Karnataka High Court in Election Petition No. 1 of 1974.

IN THE SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

Civil Appeal No. 1114 *of* 1976

NARENDRA MADIVALAPPA KHENI .. APPELLANT

Versus

MANIKRAO PATIL AND OTHERS RESPONDENTS

JUDGMENT

Krishna Iyer, J—

Four heavy volumes of case records confronted us in this appeal, as counsel opened the arguments, but some Socratic

processing seemed to condense the controversy and forensic prolixity so much so we first thought the case had shrunk to such small dimensions as to be disposed of in a short judgment. But what we initially felt, when the brief narration of facts was given, proved a snare. For, when we read out in court our opinion on the only crucial aspect of the case, counsel for the 1st respondent hopefully insisted that the factual grounds, requiring our ploughing through ponderous tomes of testimonial collection, pleadings and what not, should be investigated as he expected to sustain the invalidation of the election by the High Court on the score of corrupt practice and the consequential disqualification of the rival candidate *i.e.*, the appellant before us. He was entitled to press that part of his case and so we agreed to hear both sides extensively thereon.

However, hours of argument after, we were back to square one. At this stage, some relevant facts and circumstances need narration. The Karnataka Legislative Council has, in its composition, some members elected from the local authorities' constituencies. One such member is elected by the local Bodies of Bidar district and the specific election that falls for decision was held on May 12, 1974. According to the calendar for the poll contemplated in s.30 of the Representation of the People Act, 1951 (hereinafter called the 1951 Act), the last date for presenting the nominations was appointed as April 17, 1974. Section 33(1), requires that each candidate shall deliver to the returning officer a nomination paper as set out in the section "between 11 o'clock in the forenoon and 3 o'clock in the afternoon". The appellant and the first respondent did file their nominations in conformity with the law; their scrutiny over, they entered the fray and, after the poll was over, the appellant was declared elected, having secured 64 votes as against the 1st respondent's 54 votes. The frustrated 1st respondent found 16 illegitimate votes having been cast in favour of the successful candidate and further discovered that these 16 electors were ineligible to figure on the electoral roll but had been surreptitiously introduced therein by collusion, fraud and other improper machinations in which the returned candidate and the returning officer were collaborative actors. The purity of the election was polluted. The result of the poll was materially affected. The electoral process was vitiated by "corrupt practice" in which the appellant and the 2nd respondent were *particeps criminis*. He ventured on an election petition with the prayer to set aside the poll verdict *inter alia* under section 123(7) of the 1951 Act and also sought a declaration that he was duly elected on the score that the exclusion of the invalid votes, very probably cast in favour of the appellant, led inevitably to his arithmetical success as the one who had secured the larger number of valid votes. Such was his case.

The Petitioner had made somewhat vague, sweeping and speculative allegations about Government, higher and lower echelons of officialdom and the rival candidate but, if an apology for specificity is partially present in the petition, it is about the charge of corrupt practice roping in the returning officer-*cum*-electoral registering officer (2nd respondent) and the successful candidate (appellant). No issue was originally framed on the critical question of corrupt practice but the learned judge permitted evidence thereon to be adduced a procedure difficult to appreciate. After the trial was virtually closed and the arguments finished, the Court discovered the need for framing this decisive issue. On objection as to the absence of material facts and/or material particulars, the learned Judge framed an issue also on the actual vagueness and legal flawsomeness of pleadings on corrupt practice. Naturally, this latter question demanded prior decision but, curiously, the Court delivered all its findings on the day of judgment, a *fa-ux pass* which we must point out. Processual proprieties are designed to ensure fair play in adjudications and while such prescriptions are not rigid punctilios, their observance serves to help the judge do effective justice between parties and the disputants have faith in the intelligent impartiality and full opportunity so necessary for the success of the rule of law. In election proceeding where the whole community is silently present and the controversy is sensitive and feelings suspicious, the principles of procedural ractitude apply *a fortiori*. The judge is the quardian of processual justice and must remember that judgment on judgment belongs, in the long run, to the people. We state that stern proposition here not merely because a forensic stitch in time saves cassational nine but because courts are on continuous trial in a democracy. In this case we are not satisfied that either party has suffered in substence and procedural breaches, unless they spell unmerited prejudice, may be brushed aside at the appellate level.

Having said this, we hasten to add that had not the learned judge uncovered the suspect happenings sinisterly hovering around the last day for finalising the electoral roll, the dubious doings of the political government in a seat-hungry setting might not have been ventilated for public edification. The electoral events brought out in evidence are "power" portents to be prevented pre-emptively by law and this prompts us to deal with the testimonial circumstances surrounding the inviolable roll of voters having been adulterated after the final hours, zealous officers frantically exerting themselves in what seems at first sight to be a series of belated circus operations geared to inclusion of additional names in the roll before 17th Mid-night drew the curtain. Caesar's wife must be above suspicion and wielders of public power must fill this bill. A moral matrix and administrative culture must nurture the power process if democracy is not to commit suicide.

We will make good the relevence of these critical statements with reference to the incontrovertible facts of this case. However, we do not delve into the minutiae of evidence or span the entire factual range, that being otlose. A catalogue of circumstances, fair to both sides, will tell its own moral tale and so we set it out.

The last date for completing the electoral roll was April 17, 1974. The rival candidates (the appellant and the 1st respondent) belonged to opposing political parties but the appellant's party was in power. Both the candidates had semi-V.I.P. status in their respective parties. One member more in the Legislative Council would, pro tanto, strengthen the Ministry. This political backdrop belights some of the things which occurred on the dates proximate to the completion of the electoral roll. The administrative locomotion and the human motivation behind what the trial judge had described as 'manouvres' is simple to understand, although, as will be shown below, we do not agree wholly with all the deductions of the High Court. A particular party is in office. The strength of its members in both Houses is therefore of political significance, especially if fluid politics turns out to be the field of all possibilities.

Karnataka has a bicameral legislature and it is reasonable to suppose that the political government has an understandable concern in the election of a member of the Legislative Council, who will be of their party. Bidar District in Karnataka has a local authorities constituency seat, to be elected by the members of the local bodies there. It follows that the potential electors who are likely to favour their candidate must be brought on the rolls to ensure his victory. Inevitably there was therefore keen interest in incorporating in the electoral roll the members of the Taluk Development Board, Bidar (for short, the Bidar Board). The election to the Bidar Board had taken place years ago, 11 of them having been elected way back in 1968 and 8 later. The election of the 11 members had been duly notified in 1968 but the Board itself stood suspended, an Administrator having been appointed to run its affairs. 8 members who had been later elected to the Board landed up in the High Court on account of writ petitions filed by their rivals. Stay had been granted by the High Court and this led to an absence of 2/3 of the total members being able to function, statutorily necessitating the appointment of an Administrator. Long later the High Court disposed of the writ petitions whereby 3 returns were set aside and 5 upheld. The arithmetical upshot of these happenings was that there were 16 members duly elected to the Bidar Board, and the High Court having disposed of the writ petitions in June 1972, the local body could have been liberated from the bureaucratic management of an Administrator and allowed to function through elected representatives. All that was needed to vivify this body of local self-government was a notification under the Mysore Village

Panchayats Act X of 1959, terminating the Administrator's term, and perhaps another extending the terms of some members.

Elections to local bodies and vesting of powers in units of self-government are part of the Directive Principles of State Policy (Article 40 of the Constitution) and, in a sense, a homage to the Father of the Nation, standing as he did for participative democracy though de-centralisation of power. Unfortunately, after holding elections to the Bidar Board and making people believe that they have elected their administrative representatives at the lowest levels, the State Government did not bring to life the local board even long after the High Court had disposed of the challenges to the elections in June 1972. A Government, under our Constitution, must scrupulously and engretically implement the principles fundamental to the governance of the country as mandated by Art. 37 and, if even after holding elections Development Boards are allowed to remain moribund for failure to notify the curtailment of the Administrator's term, this neglect almost amounts to dereliction of the constitutional duty. We are unhappy to make this observation but power to the people, which is the soul of a republic, stands subverted if decentralisation and devolution desiderated in Article 40 of the Constitution is ignored by executive inaction even after holding election to the floor-level administrative bodies. The devolutionary distance to ideological Rajghat from power-jealous State capitals is unwillingly long indeed, especially in view of the familiar spectacle of long years of failure to hold elections to lacal bodies, supersession aplenty of local self-government units, and gross inaction even in issuing simple notifications without which elected bodies remain still-born. "We, the people" is not constitutional *mantra* but are the power-holders of India from the panchayat upward.

Back to the main trend of the argument. It became now compulsive for the party-in-power to de-notify the Administrator and revive the elected body if they wanted the members of the Bidar Board to vote perhaps in favour of their candidate. The 11 members elected long back in 1968 could not vote on account of the expiry of the 4 Year term unless, in view of Section 108 of Act 10 of 1959, the government issued another notification extending the term of office of those members. So the elective interest of the candidate of the party-in-power could be promoted only if three or four quick administrative steps were taken. Firstly, there was to be a notification ending the Administrator's term over the Bidar Board. Secondly, there was to be a notification extending the term of the 11 members elected in 1968. Thirdly, there was to be a notification of the election of the 5 members whose return had been upheld in the High Court in June 1972. Fourthly, the

electoral roll had to be amended by inclusion of these 16 names. If these steps were duly taken, 16 additional members would become electors and the party-in-power (if these electors belonged to that party or were under its influence) could probably expect their votes. The poll results show that the contest was keen and these 16 votes would have been of great moment. In this high-risk predicament, long bureaucratic indolence in issuing notifications and political indifference to the functioning of local bodies produced a situation where the electoral roll did not contain the names of the 16 members of the Bidar Board.

Only a few days prior to April 17, 1974 the D-day the affected candidate, *i.e.*, the appellant, moved the government for initiation of the steps mentioned above, but nothing happened. On April 16, the day before the crucial date for closing the electoral roll, *i.e.*, the last date for making nominations, the appellant moved the Minister concerned who was in Bidar to get the necessary administrative steps taken quickly. He also moved the returning officer, RW 2. We find the Minister making an endorsement on the petition. We notice the returning officer seeking telegraphic instructions from government. We see government sending an Under Secretary, PW 3, by air from Bangalore to Hyderabad and onward by car to Bidar with some orders. This PW 3 probably apprised the returning officer RW 2 about orders having been passed paying the way for inclusion of the 16 names in the electoral roll. PW 3 the Under Secretary, for reasons not known, makes a beeline the same evening to Gulbarga where he meets the Minister. The returning officer does not have with him any gazette notifications, as we see that under section 2(20) of Act X of 1959, a notification must possess the inalienable attribute of publication in the official gazette. Admittedly, the returning officer did not come by any of the necessary notifications before the evening of the 17th. Admittedly, he did not have any gazette notifications before April 25th. Under section 27 of the Representation of the People Act, 1950, the electoral registration officer who, in this case, is also the returning officer, had to have before him gazette notifications which clearly he did not have till the 25th, *i.e.*, 8 days after the relevant date. *Nevertheless he, obligingly enough, included the 16 names which was in breach of the legal provisions.*

Frenzied official movements on and after April 16 are visible in this case. The scenario excites suspicion. The candidate meets the Minister of his party on the 16th. The returning officer takes the unusual step of sending a telegram for instructions from government for inclusion of names in the electoral roll. The Secretariat despatches an Under Secretary to reach Bidar by air dash and long car driver. A meeting between the Under Secretary

and the electoral registration officer follows and then the Under Secretary winds up the day by meeting the Minister, presumably to report things done, and the registration officer supplements the electoral roll by including 16 more names, without getting the gazette notification. We have no doubt, as we will presently explain, that this inclusion is invalid, but what we are presently concerned with is the protracted inaction for years of the State government in issuing simple notifications to resuscitate the Bidar Board and the sudden celerity by which a quick chase and spurt of action resulting in a Minister's endorsement, the registration officer's telegram, Secretariat hyper busyness, the unusal step of an Under Secretary himself journeying with government orders to be deliverer to the registration officer, the electoral registration officer hastening to amend the electoral roll slurring over the legal requirement of a gazette notification and making it appear that everything was done on the 17th before mid-might, and a few other circumstances, make up a complex of dubious doings designed to help a certain candidate belonging to the party-in-power.

The officers had no personal interest as such and, in fairness, we must state the High Court has exonerated them of any oblique conduct to further their own interests. We wish to state clearly that having taken a close look at the developments we are not inclined to implicate any of the officers—and there are quire a few involved-with *malafide* conduct or collusion with the returned candidate. Legal peccadilloes are not fraud or collusion without more. However, the performance of the political government and the pressurization implicit in the hectic activities we have adverted to, read in the light of the likely political gains accruing to the party-in-power, generate apprehensions in our minds about the peril to the electoral process if political bosses in office rubberise the public services to carry out behests which are contrary to the law but non-compliance with which might be visited with crypto-punitive consequences. We would have taken a harsher view against the public servants had we something more than what may even be a rather strong suspicion of obliging diviance. Sometimes they are transfixed between Scylla and Charybdis. Even strong suspicion is no substitute for proof. It has often been said that suspicion is the *Upas tree* under whose shade reason fails and justice dies. There is a core of truth in this caveat.

Shri Bhat, counsel for the 1st respondent, argued his case strenuously but could not make out that vital nexus between the candidate who stood to gain and the officers whose action he impugned. Moreover, the movements of the Minister at about that time raises doubts and the huge expenditure involved in

rushing an Under Secretary from Bangalore by air and road to Bidar were a drain on the public exchequer which could have been avoided if action had been taken in time by a few postal communications. But the trial judge erred in substituting suspicion for certitude and drawing untenable inferences where paucity of evidence snapped the nexus needed for collusion. A court must, as usual, ask for proof beyond reasonable doubt from the party setting up corrupt practice even when there is a veneer of power politics stooping to conquer and officers thereby becoming vulnerable to 'higher' displeasure.

The faith of the people in the good faith of government is basic to a republic. The administrative syndrome that harms the citizens' hopes in the State often manifests itself in callously slow action or gravely suspicious instant action and the features of this case demonstrate both. Admittedly, the Bidar Board elections were substantially over in 1968 and were more or less complete in 1972 and yet the necessary notifications in the gazette, which are the statutory pre-condition for the local body to be legally viable, were, for years, not published and, when the critical hours for the electoral list to be finalised fell at 3 p.m. on April 17, 1974, the government and its officers went through exciting exercises unmindful of legal prescriptions and managed the illegitimate inclusion of 16 names in the electoral roll. We hope that the civil services in charge of electoral processes which are of grave concern for the survival of our democracy will remember that their masters in statutory matters are the law and law alone, not political superiors if they direct deviance from the dictates of the law. It is never to be forgotten that our country is committed to the rule of law and therefore functionaries working under statutes, even though they be government servants, must be defiantly dedicated to the law and the Constitution and, subject to them, to policies, projects and directions of the political government.

"Be you ever so high, the law is above you"—this applies to our Constitutional order.

Shri Bhat, counsel for the 1st respondent ultimately argued these aspects of the case. But, when we were more than half-way through, it became clear that the material link to make out invalidation of the election on account of 'corrupt practice' under section 123(7) of the 1951 Act was missing because it had not been made out in the evidence that there was collusion between the 2nd respondent and the appellant. At that stage, taking a realistic stance, counsel acceeded to our view that while there was sufficient room for the 1st respondent to be disturbed about the electoral verdict on the score of the inclusion of 16 names there was not any telling material, other than speculation or week suggestion,

that there was corrupt participation on the part of the officers. If this position were right – and we hold it is – what remains to be done is to ascertain the legal effect of the inclusion in the electoral roll of the new names after the expiry of the appointed hour and date.

According to the calendar for the poll contemplated in section 30 of the 1951 Act the last date for making the nominations was appointed as April 17, 1974. Section 33(1) of the 1951 Act requires that each candidate shall deliver to the Returning officer a nomination paper as set out in the section : "between 11 o'clock in the forenoon and 3 o'clock in the afternoon". The appellant and the 1st respondent did file their nominations in conformity with sections 30 and 33 of the 1951. Act but the electoral registration officer (2nd respondent in the appeal), included the names of 16 persons representing the Bidar Board. After 3 p.m. of April 17, 1974. There is a dispute between the parties as to whether such inclusion was directed on the 17th (after 3 p.m. or on the 18th, the former being the case of the appellant as well as the 2nd respondent, the latter being the case of the 1st respondent and upheld by the High Court. The Court held that, in law, any inclusion of additional names in the electoral roll of a constituency after 3 p.m., on the last date for making nomination fixed under section 30(a) of the 1951 Act was illegal. Consequently, it arrived at the follow-up decision that the 16 votes which had been cast by those objectionably added, had to be ignored. On a further study of the evidence, the court concluded that these 16 votes had been cast in favour of the elected candidate and should therefore be deducted from his total tally. The appellant, who had secured 64 votes as against responrent No. 1's 54 had only a lead of 10 votes. He slumped below the 1st respondent when 16 votes were deducted from his total. The necessary result, in the view of the High Court, was that not only had the appellant's election to be set aside but the 1st respondent deserved to be declared duly elected. This was done.

An appreciation of the evidence bearing on the question as to whether the 2nd respondent i.e., the Registration officer had acted under the appellant's oblique influence in including the additional names after the last date for such inclusion has led us to overturn the affirmative answer from the learned trial judge. The holding that a "corrupt practice", within the ambit of section 123, had been committed by the appellant who was therefore disqualified under section 8A led to two consequences. The appellent, who had won the election at the polls, lost the election in the court and worse still, suffered a six-year disqualification. The doubly aggrieved appellant has challenged the adverse verdict and the

wounded 2nd respondent (electoral registration officer) has separately appeared to wipe out the damaging effect of the obliging inclusion of names of electors after the time set by the law was over. We have already set aside the finding under section 123(7) of the 1951 Act, of corrupt practice and with it falls the disqualification.

The short point, whose impact may be lethal to the result of the election, is as to whether section 23 of the 1950 Act should be read down in conformity with sections 30 and 33 of the 1951 Act. The proposition, which has appealed to the High Court, has the approval of the ruling in *Baidyanath* (I). The Court, there, observed :—

"In our opinion, cl. 23(a) takes away the power of the electoral registration officer or the chief electoral officer to correct the entries in the electoral rolls or to include new names in the electoral rolls of a constituency after the last date before the completion of the election—

It interdicts the concerned officers from interfering with the electoral rolls under the prescribed circumstances. It puts a stop to the power conferred on them. Therefore it is not a question of irregular exercise of power but a lack of power. (page 842)

We have earlier come to the conclusion that the electoral registration officer had no power to include new names in the electoral roll on April 27, 1968. Therefore votes of the electors whose names were included in the roll on that date must be held to be void votes". (p. 843)

(i) (1970) 1 SCR 893;

There is a blanket ban in section 23(3) on any amendment, transposition or deletion of any entry or, the issuance of any direction for the inclusion of a name in the electoral roll of a constituency "*after the last date for making nominations for an election in that constituency....*" This prohibition is based on public policy and serves a public purpose as we will presently bring out. Any violation of such a mandatory provision conceived to prompt scrambles to thrust into the rolls, after the appointed time fancied voters by anxious candidates or parties spells invalidity and we have, therefore, no doubt that if in flagrant violation of section 23(3), names have been included in the electoral roll, the

bonus of such illegitimate votes shall not accrue, since the vice of voidance must attach to such names. Such void votes cannot help a candidate win the contest.

Why do we say that there is an underlying public policy and a paramount public purpose served by section 23(3) ? In our electoral scheme as unfolded in the 1951 Act, every elector ordinarily can be a candidate. Therefore, his name must be included in the list on or before the date fixed for nomination. Otherwise he loses his valuable right to run for the elective office. It is thus vital that the electoral registration officer should bring in the names of all the electors into the electoral roll before the date and hour fixed for presenting the nomination paper. There is another equally valid reason for stressing the inclusion of the names of all electors before the hour for delivering to the returning officer the nomination paper. Section 33(4) of the 1951 Act reads :

" (4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls .

*

In the light of this provision the returning officer, on receipt of the nomination paper, satisfies himself that the candidate's name and electoral roll number are correctly entered. Necessarily, this is possible only if the electoral roll contains the names of all the electors. Likewise, Section 33(5), which deals with a candidate who is an elector from a different constituency, requires of the candidate the production of a certified copy of the relevant entry showing his name in such a roll. The inference is irevitable that there must be a completed electoral roll when the time for filing the nomination paper expires. The argument is therefore incontrovertible that the final electoral roll must be with the returning officer when the last minute for delivering the nomination paper ticks off. Subsequent additions to the electoral register will inject confusion and uncertainty about the constituents or electors, introduce a disability for such subsequently included electors to be candidates for the election and run counter to the basic idea running through the scheme of the Act that in the preponderant pattern of elections, *viz.*, for the legislative assemblies and parliament, the electors shall have the concomitant right of being candidates. The cumulative effect of these various strands of reasoning and the rigour of the language of section 23(3) of the 1950 Act leaves no doubt in our minds that inclusion of the names in the electoral roll of a constituency *after* the last date for making nominations for an election in

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that constituency must be visited with fatality. Such belated arrivals are excluded by the talons of the law, and must be ignored in the poll, it is appropriate to quote from *Baidyanath* (1) here :

"The object of the aforesaid provision is to see that to the extent possible, all persons qualified to be registered as voters in any particular constituency should be duly registered and to remove from the rolls all those who are not qualified to be registered. Sub-Section (3) of Section 23 is not an important exception to the rules noted earlier. It gives a mandate to the electoral registration officer not to amend, transpose, or delete any entry in the electoral roll of a constituency after the last date for making nominations for election in that constituency and before the completion of that election. If there was no such provision, there would have been room for considerable manipulations, particularly when there are only limited number of electors in a constituency. But for that provision, it would have been possible for the concerned authorities to so manipulate the electoral rolls as to advance the prospects of a particular candidate."

A more tricky issue now arises. Assuming April 17, 1974 to be the last date for filling nominations (and it is so in this case), can the electoral roll be amended on that date to include additional names, but *after the hour set for presenting the nomination paper ?*

Section 33(1) specifies inflexibly that the nomination paper shall be presented "between the hours of 11 o'clock in the forenoon and 3 o'clock in the afternoon" That means that the duration of the day for representation of nomination papers terminates at 3 o'clock tn the afternoon. If an elector is to be able to file his nomination paper his name must be on the electoral roll at 3 p.m., on the last day for filing nomination. So the temporal *terminus ad quem* is also the day for finalisation of the electoral register and by the same token, that day *terminates at* just that hour when the returning officer shuts the door. The day is truncated to terminate with the time when reception of nominations is closed.

Section 23 of the 1950 Act does state that the inclusion of the names in the electoral roll can be carried out till the last *date* for making nominations for an election in the concerned constituency. What, then, is the last date ? When does the last date cease to be ? If the purpose of the provision were to illumine its sense, if the literality of the text is to be invigorated by a sense of rationality, if conscionable commonsense were an attribute of statutory construction, there can hardly be any doubt that the expression "last date for making nominations" must mean the last hour

of the last date during which presentation of nomination papers is permitted under Section 33 of the 1951 Act. In short, Section 23(3) of the 1950 Act and Section 33(1), (4) and (5) of the 1951 Act interact, fertilise and operate as a duplex of clauses. So viewed, the inclusion of the names in the electoral roll after 3 p.m., on April 17, 1974, is illegitimate and illegal.

At this stage, it may be appropriate to make reference to *Ramji Prasad Singh*(2) to which one of us was a party. Indeed, attention of counsel was invited to this decision by the Court. That case turned on the inclusion of 40 voters in contravention of Section 23(3) of the 1950 Act. By incorporating in the electoral roll new names *after* the last date for filing nomination, this Court held that such inclusion of new names would be clearly in breach of the mandate contained in Section 23(3) of the 1950 Act and therefore, beyond the jurisdiction of the electoral registration officer. This view is precisely what we have taken in the present case.

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(2) (1977) I SCR 741.

In that case this Court on fact, took the view that the communication from the Chief Executive Officer of the local authority to substitute certain new names in the electoral roll could not have been acted upon before April 6, 1972, the last date of nomination being April 5, 1972. This is clear from the following observation in the judgment:

"In fact the latter was 'diarised' by Shri Bose's office on the 6th ... The fact of the matter seems to be that the notifications of the 4th April came too late for being acted upon before the deadline, which was the 5th. The red tape moved slowly, the due date expired and then every one awoke to the necessity of curing the infirmity by hurrying with the implementation of the notifications. But it was too late and the law had already put in seal on the electoral roll as it existed on the 5th April. If could not be touched thereafter, until the completion of the election".

This Court, in that case, observed that it was "impossible" to accept the half-hearted claim of Shri Bose that he passed orders for inclusion of the new names on the 5th itself'. This Court was not called upon to go into the question as to what would be the legal position if the electoral rolls were actually amended at 11-30 p.m. on 5th April after the last hour for the nomination, *viz.*, 3 p.m. on that day. This finer facet which falls for consideration in the present appeal *viz.*, whether the "last day" contemplated in Section 23(3) of the 1950 Act ends at 3 p.m. on that day for the

purpose, or continues until mid-night did not actually arise for judicial investigation in *Ramji Prasad's Case* (2).

The upshot of the above interpretation is that the 16 names which have been brought into the electoral register subsequent to 3 p.m. of April 17, 1974 must be excluded from the reckoning to determine the returned candidate.

The learned Judge has declared the 2nd respondent duly elected on the strength, mainly, of inference drawn from the oral evidence of the rival candidates. The ballots are alive and available and speak best. Why, then, hazard a verdict on the flimsy foundation of oral evidence rendered by interested parties ? The vanquished candidate's *ipse dixits* or the victor's vague expectations of voters' loyalty-the grounds relied on-are shifting sands to build a firm finding upon, knowing how notorious is the cuts are of double-crossing and defection in electoral politics and how undepandable the testimonial lips of partisans can be unless authenticated by surer corroboration. Chancy credulity must be tempered by critical appraisal, especially whom the return by the electoral process is to be over-turned by unsafe forensic guesses. And where the ground for recount has been fairly laid by testimony, and the ballot papers, which bear clinching proof on their bosoms are at hand, they are the best evidence to be looked into. No party can run away from their indelible truth and we wonder why the learned judge avoided the obvious and resorted to the risky. May be, he thought reopening and recount of ballots may undo the secrecy of the poll. *We are sure that the correct course in the circumstances of this case is to send for and scrutinize the* 16 *ballots for the limited purpose of discovering for whom, how many of the invalid sixteen have been cast. Secrecy of ballot shall be maintained when scrutiny is conducted and only that part which reveals the vote (not the persons who voted) shall be open for inspection.*

What, then, is the result of the reasonings which have prevailed with us ? It is simply this, *viz.*, that the 16 votes of the members of the Bidar Taluk Development Board should be excluded and consequential tilting of the result re-discovered. We are, therefore, constrained to direct the High Court to send for the ballot papers and pick out the 16 ballots relating to the Bidar Board members, examine them without exposing the identity of the persons who have voted and to whom they have voted and record a re-tally excluding these 16 tainted votes from the respective candidates. If the resultant balance sheet shows that the appellant has polled less valid votes than the 1st respondent, his election will be set aside and the 1st respondent declared duly elected. If, on the other hand, despite these deletions the appellant scores over the

1st respondent, his return will be maintained. Any way, counsel on both sides agree that the best course will be to call for a report from the High Court in the light of the operations above indicated. The Learned single Judge who heard the case will examine the 16 ballots as directed above consistently with natural justice, record the number of votes out of the 16 each has got and forward to this Court a comprehensive and correct statement with the necessary particulars. This report shall be made within 3 weeks from the receipt of the records from this Court and the appeal shall be posted for disposal immediately the report reaches. With these directions we dispose of the appeal *pro tempore*.

By way of post-script, we may state that counsel for the 1st respondent submitted, after we crystallized the directions indicated above, that he was not too sure whether the 16 ballot papers could be identified. The appellant's counsel, however, asserted that there were numbers indelibly imprinted on the reverse of the ballot papers and, as such the identification of 16 impugned votes may not present a problem. In the event of impossibility of fixing identity, a report to that effect will be forthcoming from the High Court and we may, notwithstanding the observations about the oral evidence made above, re-hear the case with a view to record our finding as to which way the voting went, out of the offending 16, so that we may determine whether the result of the election has been materially effected. If it is not possible, further suitable directions will be considered.

We may also mention that at one stage of the arguments Shri L. N. Sinha drew our attention to a designedly wide amendment to the Act of 1951 made in the wake of the election case of Smt. Indira Gandhi. Its validity, for our provisions, has been upheld by this Court in Smt. Indira Gandhi Nehru *vs.* Raj Narain (3). It was pressed before us that with the re-definition of "candidate" in section 79(b) and the addition of a proviso to section 127 (7), by Act XL of 1975, the present election petition had met with its statutory waterloo. But Shri Bhat urged that his averments of officials' abetment of promotion of the appellant's candidacy related also to a point of time *after* the nomination paper was filed. He also submitted that the imputations against the electoral registration officer were so far beyond his duties that the blanket proviso could not protect the acts. Since we have taken the view that corrupt practice, even under the amended section 127(7), has not been established, the pronouncement on the exonerative efficacy of the amended Act does not arise. But officials must realise—and so too the highest in Administration that the proviso to section 123(7) does not authorise out-of-the-way

doing which are irregular. (3) (1976) 25 CR 347. A wrong does not become rights if the law slurs over it.

We part with this case with an uneasy mind. There is a finding by the High Court that an influential candidate had interfered with officials to adulterate an electoral roll. We have vacated the finding but must warn that the civil services have a high commitment to the rule of law, regardless of covert commands and indirect importunities of bosses inside and outside government. Lord Chesham said in the House of Lords in 1958. "He is answerable to law alone and not to any public authority". A suppliant, obsequious, satellite public service—or one that responds to allurements, promotional or pecuniary — is a danger to a democratic polity and to the supremacy of the rule of law. The courage and probity of the hierarchical election machinery and its engineers, even when handsome temptation entices or huffy higher power browbeats, is the guarantee of electoral purity. To conclude, we are unhappy that such aspersions against public servants affect the integrity and morale of the services but where the easy virtue of an election official or political power-wielder has distorted the assembly-line operations, he will suffer one day. Be that as it may, we express no final opinion beyond what has already been said.

Sd/– ..... J.
(V. R. Krishna Iyer)

Sd/– ..... J.
(P. K. Goswami)

July 28, 1977.

IN THE SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

Civil Appeal No. 1114 (*NCE*) 1976

(Appeal under section 116A of the Representation of People Act, 1951 from the Judgment and Order dated the 22nd September, 1976 of the High Court of Karnataka at Bangalore in Election Petition No. 1 of 1974).

Narendra Madivalappa Kheni, son of Shri Madivalappa Kheni, aged about 38 years, residing at Post Ranjol, Taluk Bidar, District Bidar .. APPELLANT.

vs.

1. Manikrao Patil, son of Shamrao Patil, aged about 39 years, residing at Thana Kushnoor, Taluk Aurad, District Bidar.

2. Returning Officer for the Bidar Local Authority Constituency, Karnataka Legislative Council, and Deputy Commissoiner, Bidar, District Bidar.

3. Chandrakanth Gurupadappa, son of Gurupadappa, aged about 38 years, residing at Bidar.

4. Dayanand and Jayanand Rao Laloji, son of Laloji, aged about 35 years residing at Shangunj, Harijanawadh, Bidar RESPONDENTS

Coram : *6th December*, 1977

Hon'ble Mr. Justice V. R. Krishna Iyer

Hon'ble Mr. Justice P. K. Goswamy

For the Appellent': M/s S. S. Javali and B. P. Singh, Advocates.
For Respondent No. 1 : Mr. K. N. Bhatt, Advocate.
For Respondent No. 2 : Mr. Narayan Mettar, Advocate.

The Appeal above-mentioned being called on for hearing before this Court on the 6th day of December, 1977 *upon* hearing counsel for the appellant and respondents Nos. 1 and 2 and *upon* perusing the report dated the 19th October 1977 received from the High Court of Karnataka at Bangalore in pursuance of this Court's Order dated the 28th July, 1977 *This Court* in allowing the appeal above-mentioned *Doth Order* (1) That the Judgment and Order dated 22nd September, 1976 of the High Court of Karnataka at Bangalore in Election Petition No. 1 of 1974 be and are hereby set aside and the Order dated 12th May, 1974 of the Returning Officer for the Bidar Local Authority Constituency, Karnataka Legislative Council, (Deputy Commissioner, Bidar, District, Bidar) respondent No. 2 herein, declaring the appellant herein as the returned candidate to fill the seat in the Legislative Council of Karnataka from the Bidar Local authorities constituency shall stand (2) That the parties herein shall bear and pay their own costs throughout :

And this court doth further order that this *order* be punctually observed and carried into execution by all concerned ;

Witness the Hon'ble Mr. Mirza Hameedullah Beg, Chief Justice of India at the Supreme Court, New Delhi, dated this the 6th day of December, 1977.

Sd/-
Deputy Registrar.
By order.
(T. NAGARATHNAM)
Secretary.

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